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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,599	06/26/2003	John Simpson	12727-00032	5060

7590 06/16/2005

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EXAMINER

JENKINS, JERMAINE L

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/606,599

Applicant(s)

SIMPSON, JOHN

Examiner

Jermaine Jenkins

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 is/are allowed.
- 6) ☒ Claim(s) 8-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 9, 11-16 & 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Geschwender et al (5,0368,606).

In regards to claims 8, 11-13, 15 & 19, Geschwender et al teaches a rain gauge assembly comprising a collection tube (14) having a side wall and a bottom wall closing a first end (i.e. lower supporting end, 44) of the collection tube (See Figures 1-3), a collection tube (14) open at a second end (i.e. opening, 30), a cap member (i.e. plastic plug, 22) comprising an open end and a closed end, and sized to fit over and cover an end of the collection tube (Column 4, lines 30-38), the collection tube (14) and the cap member (22) molded from a resilient translucent plastisol material (Column 4, lines 30-43), and a means of attaching the cap member (22) to a surface (i.e. mounting section, 42; Column 7, lines 7-16).

With respect to claims 9, 16, 20 & 21, Geschwender et al teaches wherein the collection tube (14) comprises indicia (20) located on the sidewall for measuring collected contents of the collection tube (Column 4, lines 22-29; See Figure 1).

With respect to claims 14, 18 & 22, Geschwender et al teaches wherein the plastisol material comprises at least one of a pigment and a dye (Column 5, lines 42-49).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geschwender et al (5,038,606) in view of Geschwender (6,494,089).

With respect to claims 10 & 17, Geschwender et al ('606) teaches a rain gauge comprising the means for attaching the cap to a surface having at least a stake (24, blade being interpreted as a stake) (Column 8, lines 2-5). However, Geschwender et al ('606) does not the means for attaching the cap to a surface having at least a fastener.

Geschwender ('089) teaches a rain gauge having the means to attaching to a surface by the use of fasteners (Column 4, lines 56-65; See Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide fastening means as taught by Geschwender ('089) into the rain gauge of Geschwender et al ('606) for the purpose of mounting the rain gauge into the ground or using any other desirable mounting techniques like mounding on a flat horizontal surface or a hanging mechanism (Geschwender ('089); Column 4, lines 50-55).

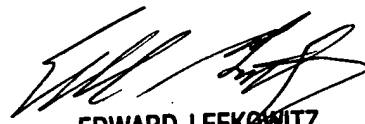
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermaine Jenkins whose telephone number is 571-272-2179. The examiner can normally be reached on Monday-Friday 8am-430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jermaine Jenkins  
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